

BORA LASKIN LAW LIBRARY



3 1761 10631790 2

CASES AND MATERIALS: ADVANCED CONSTITUTIONAL LAW

THE STRUCTURE OF CHARTER RIGHTS

VOLUME II

Professor Lorraine E. Weinrib

September, 1989

LAW LIBRARY

AUG 15 1989

FACULTY OF LAW
UNIVERSITY OF TORONTO

CASES AND MATERIALS: ADVANCED CONSTITUTIONAL LAW

THE STRUCTURE OF CHARTER RIGHTS

VOLUME II

Professor Lorraine E. Weinrib

September, 1989



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/advancedconstitu02wein_0

TABLE OF CONTENTS

Cases and Materials: Advanced Constitutional Law

The Structure of Charter Rights

VOLUME II

	<u>Page</u>
II. The Structure of Rights Guarantees	
1. Rights	1
Mashaw, excerpt from <u>Due Process and the Administrative State</u>	1
Shestack, "The Jurisprudence of Human Rights"	5
Newspaper Clippings	30
Tushnet, "The V.S. Constitution and the Intent of the Framers"	32
Richards, excerpt from <u>The Moral Criticism of the Law</u>	39
Gerwirth, "The Basis and Content of Human Rights"	48
2. Limits	62
a) Prescribed by Law	62
Ross, extract from "Limitations on Human Rights in International Law: Their Relevance to the Canadian Charter of Rights and Freedom"	62
Judgment of Inter-American Court of Human Rights, May 9, 1986	64
b) The Non-absolute Nature of Rights	70
Neuborne, "Freedom of Expression in the United States - A Case Study in Implied Limitations on Textually Absolute Constitutional Rights" ...	70

c)	Reasonableness	79
	Linde, "Due Process of Law Making", "Legislative Purpose, Rationality, and Equal Protection"	
	Kiss, "Permissible Limitations on Rights"	79
d)	Balancing	120
	Henkin, excerpt from "Infallibility Under Law: Constitutional Balancing" .	120
	Aleinikoff, "Constitutional Law in the Age of Balancing"	123
	Meiklejohn, The Balancing of Self- Preservation Against Political Freedom	139
e)	The Siracusa Principles on the Limitation and Derogation Provisions in the Inter- national Covenant on Civil and Political Rights (extract)	145
3.	Derogation	151
	Hartman, "Derogation from Human Rights Treaties in Public Emergencies"	151
	Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (extract)	172
	<u>Alliance des Professeurs de Montreal</u> <u>v. Quebec (A-G)</u> (1985), 21 D.L.R. (4th 354 (Que. C.A.)	179

III. The Structure of Charter Rights

a)	Commentators	192
	Peter Hogg, <u>Constitutional Law of Canada</u> (2nd) 678 ff	192
	Timothy J. Christian, "The Limited Operation of the Limitations Clause" (1987) 25 Alta. L. Rev. 264	202

Robin M. Elliot, "The Supreme Court of Canada and Section 1 - The Erosion of the Common Front", (1987) 12 Queen's L.J. 278	215
Patrick Monahan, <u>Politics and the Constitution</u> (1988) pp. 115-120	235
Brian Slattery, (1983) 61 Osgoode Bar Review 391	240
Allan Hutchison, <u>Dwelling on the Threshold</u> , pp. 233-6	245
Weiler & Elliot (eds.) from <u>Litigating the Values of a Nation</u>	247
b) History	260
Evolution of Charter Text	260
c) The Supreme Court of Canada	272
<u>R. v. Oakes</u> , [1986] 1 S.C.R. 103 at 135-142	272

IV. Of Constitutional Myth & Metaphor

Peter Hogg, <u>Constitutional Law of Canada</u> (2nd) at pp. 657-8	276
<u>Reference Re the word "Persons" in Section 24 of the B.N.A. Act, 1867</u>	
S.C.C. judgment	278
Privy Council judgment	302
Justice Thurgood Marshall, "The Constitution's Bicentennial: Commemorating the Wrong Document"?	318
William Bradford Reynolds, "Another View: Our Magnificent Constitution"	322
Madam Justice Wilson, "The Making of a Constitution: Approaches to Judicial Interpretation"	329

